

Advisory Opinion 19-010

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2018). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

Beverley Berg asked for an advisory opinion regarding the Minnesota Department of Health's (MDH) response to her request for data about two MDH employees. Lynn Belgea, Responsible Authority Designee and Data Practices Compliance Official, responded on behalf of MDH.

In an email dated March 9, 2018, Ms. Berg asked MDH Commissioner Malcolm and Ms. Belgea for access to "complaints/concerns/investigatory findings" about two MDH employees, one who resigned and another whose employment was terminated. MDH confirmed receipt in an email dated March 12, 2018. In her opinion request, Ms. Berg wrote, "[e]ight months later, November 8, 2018, MDH responded that there wasn't any responsive data."

Issue:

Based on the opinion request, the Commissioner agreed to address the following issue:

Did the Minnesota Department of Health (MDH) respond appropriately to a March 9, 2018, data request, pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13?

Discussion:

Pursuant to Minnesota Statutes, section 13.03, when a government entity receives a data request from a requester who is not the subject of the data, the entity is required to respond in an appropriate and prompt manner and within a reasonable time. (See section 13.03, subdivision 2(a), and Minnesota Rules, part 1205.0300.) In responding, an entity must provide the data, advise that the data are classified such that the requester cannot have access, or inform the requester that the data do not exist.

In previous advisory opinions, the Commissioner has stated that a prompt, reasonable response is relative to the volume of data requested. (See Advisory Opinions 18-006, 13-003, 06-014, 05-015, 04-027, 97-005, 95-006.)

Here, Ms. Berg asked for public data on two employees.

In her comments to the Commissioner, Ms. Belgea discussed Ms. Berg's numerous requests to various MDH staff over a number of years. She wrote:

Ms. Berg's request of March 9, 2018, was but one of many formal and informal requests, questions, and other emailed and in-person contacts that Ms. Berg has submitted to MDH staff over several years. In order to respond to her request for an advisory opinion, I feel it necessary to view this request in the context of her numerous other contacts with MDH Responsible Authorities Commissioner Ed Ehlinger and Jan Malcolm, in addition to frequent contacts with the MDH Deputy Commissioner, Assistant Commissioners, Human Resources and Health Regulation Division Directors, and directors of the MDH Office of Health Facility Complaints.

Ms. Berg began making what she termed data practices requests at least as far back as 2014, primarily directed to the MDH Health Regulation Division (HRD) and the HRD Office of Health Facility Complaints (OHFC). She sent her communications via email to HRD and OHFC staff and managers. Her 'requests' included asking numerous questions (which are not valid data requests), criticisms of staff, and challenges to internal policies, procedures, and practices.

MDH policy permits the public to make a request directly to staff of the program that may have the data, rather than making an official request to the Responsible Authority (the Commissioner) or the RA designee (me). However, the policy is clear that, unless the request is submitted to the Commissioner or me, it is not an official data practices request. Consequently, program staff respond directly if they can and seek legal advice from the Commissioner's Legal Unit as necessary. The data practices function in the MDH Legal Unit does not monitor responses for these inquiries. At some point since then, Ms. Berg began addressing data practices requests to the Commissioner and me. However, she also continued her practice of sending additional inquiries, comments, and questions to MDH executive office and program staff.

The Commissioner acknowledges that Ms. Berg has made numerous data requests to MDH, "official" and otherwise, as both types are allowed under MDH's data access policy.

Ms. Belgea wrote in further detail about Ms. Berg's interactions with MDH:

MDH found it challenging to even keep track of Ms. Berg's communications, much less complete responses to her requests. Ms. Berg made numerous requests, many of which were overlapping and repetitive. Many were a mixture of questions and requests that had to be parsed to determine what she was actually getting at. She sent requests to multiple MDH recipients. She sent multi-page emails with requests embedded in the emails. We have sent responses to some of her requests that she stated incorrectly she did not receive. She complained that her computer was not able to open data that was sent and demanded that it be reformatted and sent to her. In some cases, we notified her of completed responses, but she would not come in to MDH to review the responses.

While the other requests provide relevant context to MDH's response, this opinion focuses on MDH's response to Ms. Berg's March 9, 2018, data request, which was an official request made to the responsible authority for public data related to complaints about two MDH employees. Given the facts of this specific data request, including the type and amount of data requested, MDH's response to Ms. Berg was not timely.

The Commissioner wishes to note, however, that had MDH communicated with Ms. Berg beyond its initial confirmation of receipt of her request, the Commissioner might view the circumstances differently. In Advisory Opinion 18-010, the Commissioner discussed issues that arise in situations in which a requester makes numerous and/or voluminous data requests:

In Advisory Opinion 14-003, the Commissioner opined that the University of Minnesota had responded appropriately to a data requester, even though the University had not provided any data to the requester after a period of five months. In that opinion, the requester had asked for access to data related to numerous studies conducted by the University. The University acknowledged his request on the same day he sent it. A month later, the University provided him with an estimate of copy charges and a recap of his remaining data requests. Two weeks later, the University provided the requester with a list of responsive studies (83 studies) so he could determine the order in which he wanted to review them. The Commissioner wrote:

Based on the complexity of the request and the fact that the University has been in continual communication with Mr. Elliot, it is the Commissioner's opinion that the University has acted appropriately in responding to Mr. Elliott's October 20, 2013, request. It seems reasonable that the request might warrant the time that has elapsed, especially in the context of Mr. Elliott's various other requests.

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issue raised is as follows:

The Minnesota Department of Health did not respond appropriately to a March 9, 2018, data request, pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

A handwritten signature in black ink that reads "ARobertsDavis". The signature is written in a cursive, flowing style.

Alice Roberts-Davis
Commissioner
June 18, 2019